

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RASSAN RICHARDSON,
Petitioner,

v.

JOHN KERESTES, et al.
Respondents.

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Civ. No. 15-4687

ORDER

AND NOW, this 27th day of December, 2017, upon consideration of Petitioner's *pro se* Amended Petition for Writ of Habeas Corpus (Doc. No. 14), Traverse (Doc. No. 20), Objections to the Report and Recommendation (Doc. No. 26), and Reply to Respondents' Response to Petitioner's Objections (Doc. No. 30), Respondents' Response to Petition for Writ of Habeas Corpus (Doc. No. 19) and Response to Petitioner's Objections (Doc. No. 29), and Magistrate Judge Carol Sandra Moore Wells's Report and Recommendation (Doc. No. 22), and after independent review of the record, it is hereby **ORDERED** that:

1. Petitioner's third, fourth, fifth, seventh, and eighth Objections (Doc. No. 26) are **OVERRULED**;
2. Petitioner's first, second, and sixth Objections (Doc. No. 26) are **OVERRULED without prejudice as moot**;
3. The magistrate's Report and Recommendation is **APPROVED** and **ADOPTED in part**, as set forth in my Notice dated December 27, 2017;
4. Ground One and Claims 3(b) and 4(c) of the Amended Petition (Doc. No. 14) are **DENIED**;
5. Claims 3(c), 4(a), 4(b), and 4(d) of the Amended Petition (Doc. No. 14) are **DISMISSED** as procedurally defaulted;

6. Ground Three of the Amended Petition (Doc. No. 14) is **DISMISSED** as procedurally defaulted insofar as it states a single claim of cumulative error based on Claims 3(a), (b), and (c); and

7. A certificate of appealability shall **NOT ISSUE**.

It is **FURTHER ORDERED** that:

1. The above-captioned case is **REFERRED** to the Honorable Carol Sandra Moore Wells, United States Magistrate Judge, for a Report and Recommendation on Petitioner's remaining claims, as set forth in my Notice dated December 27, 2017;
2. Pursuant to Local Civil Rule 72.1.IV(c), all issues and evidence shall be presented to the United States Magistrate Judge, and new issues and evidence shall not be raised after the filing of the Report and Recommendation if they could have been presented to the United States Magistrate Judge;
8. On remand, the Parties shall each **FILE** a memorandum **no later than January 31, 2018**, addressing: (1) whether Petitioner presented a claim of cumulative prosecutorial misconduct to the state courts; and (2) whether the Superior Court was nonetheless required to address Petitioner's individual prosecutorial misconduct claims cumulatively;
9. In their memorandum, Respondents shall also **ADDRESS**: (1) whether the trial court's decision not to grant a mistrial for manifest necessity under Pennsylvania Rule of Criminal Procedure 605 was independent of federal law; (2) if not, what standard of review should apply to Claim 2(d); and (3) whether Petitioner is entitled to an evidentiary hearing as to his actual innocence. Respondents shall **ATTACH** Petitioner's post-trial motions and appellate briefs as exhibits to their memorandum; and

10. The **CLERK OF COURT** shall **SEND** a copy of this Order and the Notice dated December 27, 2017, to Petitioner **FORTHWITH**.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

Paul S. Diamond, J.